

REMARKS

Reconsideration of the present application in light of the following remarks is respectfully requested. Claims 1-29 are pending.

Claim Rejection Under 35 U.S.C. 102 (a) or (b)

Claims 1-5, 7, 14-22, and 29 stand rejected under 35 U.S.C. § 102 (a) or (b) as allegedly being anticipated by Neuwelt, et al. *Cancer Res.*, Nov. 1, 2001. Applicants respectfully traverse this rejection and submit the cited reference is not properly cited against the present application under either 35 U.S.C. § 102 (a) or 35 U.S.C. § 102 (b).

Regarding the rejection based on the cited reference as under 35 U.S.C. § 102 (b), Applicants note that a cited reference cannot act as a statutory bar to patentability if it is published less than one year prior to the priority date of the application. In the case at hand, the cited reference is dated November 1, 2001, while the present application has a priority date of October 31, 2002. Thus, the one-year period prior to the priority date of the present application begins on October 31, 2001, and the cited reference was published during that one year period prior to the priority date. In light of this, the cited reference is not properly citable against the present application under 35 U.S.C. § 102 (b).

With regard to the rejection based on the cited reference under 35 U.S.C. § 102 (a), Applicants also traverse this rejection. Applicants submit that a rejection based on a cited reference that is not a statutory bar may be overcome by evidencing that the publication was either by an Applicant or on an Applicant's behalf in accordance with 37 C.F.R. § 1.132. Accordingly, Applicants submit herewith Declarations by each joint inventor of the present application as evidence to confirm that the cited reference is Applicants' own work and is not "by another." These Declarations further confirm that the contribution of the other named authors in the cited reference did not rise to an inventive level, but instead was work performed under the direction or supervision of either or both of the joint inventors. See *In re Katz*, 687 F.2d 450, 215 U.S.P.Q. 14.

In light of the fact that the teachings of the cited reference do not represent the work of another, the cited reference is not appropriately cited against the present application

under 35 U.S.C. § 102 (a). Accordingly, Applicants respectfully submit the basis for rejection has been overcome, and respectfully request this rejection be withdrawn.

Claim Rejection Under 35 U.S.C. § 103

Claims 1-29 stand rejected under 35 U.S.C. § 103 (a) as being obvious over Neuwelt, et al., *Cancer Res.*, Nov. 1, 2001, in view of Muldoon, et al., *J. Pharm. and Exp. Therap.*, March, 2001, and Doolittle, et al., *Blood*, Nov. 16, 2001. Applicants respectfully traverse this rejection and submit Neuwelt, et al., and Doolittle, et al., are not citable references against the present application under 35 U.S.C. § 103 (a).

As set forth in detail above, a cited reference that is not a statutory bar may be overcome by a showing that the publication was by an Applicant or on behalf of an Applicant. Accordingly, Applicants submit herewith appropriately prepared Declarations from each joint inventor of the present application as evidence to confirm that the cited references Neuwelt, et al., and Doolittle, et al., are Applicants' own work and are not "by another." Consequently, the teachings of both references cannot be used in combination with the teachings of Muldoon, et al., in rendering any claimed subject matter obvious.

Furthermore, the teaching of the Muldoon, et al., reference by itself fails to disclose or suggest the presently claimed methods. In particular, the Action alleges Muldoon, et al., disclose that sodium thiosulfate, *N*-Acetylcysteine and glutathione ethyl ester act as chemoprotectants against toxicity of carboplatin, cisplatin, etoposide phosphate and melphalan on small cell lung cancer cells and fibroblasts. Applicants traverse this rejection and submit the cited reference does not disclose or suggest the presently claimed methods. The cited reference does not contemplate a method for preventing or ameliorating chemotherapeutic agent-induced thrombocytopenia, comprising administering to a patient in need thereof an effective amount of a thiol-based compound or composition prior to, concurrently with, or following the administration of a chemotherapeutic agent or chemotherapeutic agents. Accordingly, Applicants respectfully submit the teachings of Muldoon, et al., fail to render obvious the subject matter of the pending claims, and respectfully request this rejection be withdrawn.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

It is respectfully submitted that all of the claims remaining in the application are believed to be allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,

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WTC/JEH:mcs

Enclosures:

Declaration of Edward A. Neuwelt under 37 C.F.R. § 1.132
Declaration of Leslie L. Muldoon under 37 C.F.R. § 1.132

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